IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.334 OF 2003

Shri Tulidas Soiru Lad,
By his constituted Attorney
Avduth Soiru Lad,
House No.410, Kavery Nivas,
Sanvordem Tisk,
Post Curchorem,
Goa 403 706. ... Petitioner.

Versus

1. Shri Saude Vincent Rodrigues,
Gadni Bag Xir,
Sanvordem Tisk,
Post Curchorem, Goa.

2. Shri Pascal Vincent Rodrigues,
Gadni Bag Xir,
Sanvordem Tisk,
Post Curchorem, Goa.

3. Shri Socorro Vincent Rodrigues,
Gadni Bag Xir,
Sanvordem Tisk,
Post Curchorem, Goa. ... Respondents.

Mr. A. F. Diniz, Advocate for the petitioner.

Mr. M. S. Sonak, Advocate for the respondents.

CORAM : DR. S. RADHAKRISHNAN, J.

DATE : OCTOBER, 19 2006.

ORAL JUDGMENT :

1. By this petition, the petitioner is challenging the Order dated 4.7.2003 passed by the learned Civil Judge Junior Division, Quepem, Incharge of Sanguem Court, whereby the learned Judge had dismissed the application for appointment of Commissioner to carry out the demarcation as per the amended prayer in the plaint. The learned Trial Judge had declined to grant the application mainly on the ground that the evidence of the plaintiff and the defendants was already completed and the matter was for additional evidence of the plaintiff and the defendants on the amended pleadings and as such the application for appointment of Commissioner was rejected on the ground that they would delay the proceedings.

2. Learned Counsel appearing on behalf of the petitioner pointed out that, in fact, the Commissioner was specifically appointed for the purpose of demarcation and he had partly carried out the same. However, he could not complete the demarcation, in view of the interference by the defendants and their Advocate as indicated by the earlier Commissioner's report dated 16.9.2002.

3. Learned Counsel for the petitioner pointed out that there is no dispute that the plaintiff had sold land admeasuring 300 square

meters of survey no.89/5 by a Sale Deed dated 4.7.1988. He also pointed out that there is no dispute that the Sale Deed has also been duly registered. The learned Counsel for the petitioner also pointed out that the only dispute is that out of the total area of 550 square meters which belongs to the plaintiff, the plaintiff had sold only 300 square meters which have to be demarcated so that the defendants can take possession of the said 300 square meters and the plaintiff can retain the balance of 250 square meters. The learned Counsel for the petitioner further pointed from para 4(a)(a) of the plaint to indicate the location of 250 square meters belonging to the plaintiff out of the total area of 550 square meters. The learned Counsel for the petitioner submitted that in the larger interest of justice, that the earlier Commissioner who was prevented from carrying out the demarcation should have been allowed to complete the said demarcation.

4. The learned Counsel appearing for the respondents merely contended that the learned Trial Judge was right in rejecting the appointment of Commissioner for the purpose of demarcation. However, he could not dispute that such a demarcation would be useful to the Trial Court to know the exact location of 300 square meters which belongs to the respondents/defendants and the balance 250 square meters which belongs to the petitioner/plaintiff.

5. Having regard to the facts and circumstances of the case, specially when there is no dispute when the petitioner/plaintiff had sold 300 square meters of land to the defendants/respondents, it would be in the interest of all the parties to have their lands clearly demarcated on the plan showing the exact possession of 300 square meters belonging to the defendants/respondents as well as 250 square meters which belongs to the plaintiff/petitioner. The learned Trial Judge had wrongly refused to exercise the discretion correctly and wrongly refused to exercise the jurisdiction in that behalf. The Trial Judge ought to allow the Commissioner to complete the said demarcation. The impugned Order dated 4.7.2003 stands quashed and set aside, and the Trial Judge is directed to appoint a Commissioner so as to enable the him to demarcate clearly on the plan to show that 300 square meters belonging to the defendants/respondents and 250 square meters belonging to the plaintiff/petitioner. Rule is made absolute accordingly.

DR. S. RADHAKRISHNAN, J.

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